ATTORNEY DOCKET NO.: 2003P01781WOUS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

In re Patent Application of

Georg CURTIUS et al.

Serial No. 10/583,636 TC/A.U.: 1792

Filed: March 29, 2007 Examiner: Samuel A. Waldbaum

For: DISHWASHER WITH A SYSTEM FOR RECOGNITION

* * * * * * * * * * * *

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REPLY BRIEF

This is a reply to the Examiner's Answer mailed August 11, 2009.

In paragraph 11 of the Answer, the Examiner correctly characterizes Appellants' argument by indicating that the claims of the present application are directed to a dishwasher including a system for recognition of the fluid level of rinsing fluid contained in the dishwasher, whereas the claims in the co-pending application (U.S. Application No. 10/583,697) are directed to a system for recognition of the fluid level of washing fluid contained in the dishwasher. However, the Examiner incorrectly states at the bottom of page 6 of the Examiner's Answer that "whether the fluid is rinsing fluid or washing fluid does not matter since it is the same fluid water". This assertion is incorrect as washing fluid is not rinsing fluid and rinsing fluid is not washing fluid. Thus, the scope of the claims of the present application is different compared to

the claims of the co-pending application such that infringement of one set of claims does not necessarily result in infringement of the other set of claims.

Thus, the Board is requested to reverse the rejection under 35 U.S.C. §101.

In addition, in paragraph 20 of the Examiner's Answer, the Examiner mischaracterizes Appellants' argument regarding claim 13. In particular, Appellants argued that neither Wennerberg et al. nor Adamski et al. discloses the claimed two filling sensors or electrical circuitry that closes when the at least two filling levels' sensors simultaneously come in contact with the rinsing fluid. See the sentence/paragraph bridging pages 11 and 12 of the Appeal Brief.

By contrast, the Examiner only focuses on the second part of Appellants' argument, i.e., that the prior art does not teach electric circuitry that preferably closes at low current level from the sensor. However, the rejection of claim 11, from which claim 13 depends, is based on the major premise that it would have been obvious to one of ordinary skill in the art to have used the rectangular sensor taught by Adamski et al. in the apparatus of Wennerberg et al., " … thus reducing the number of fluid level sensor to one." See the sentence bridging paragraphs 4 and 5 of the Answer. Claim 13, of course, specifies at least two filling level sensors provided between which an electrical circuit preferably closes at a low current as soon as the filling level sensors simultaneously come in contact with the rinsing fluid.

In summary, the Examiner inconsistently interprets and applies Wennerberg et al. and Adamski et al. in regard to the rejection of claims 11 and 13. In the first instance, the Examiner indicates that it is obvious to change the Wennerberg et al. system to reduce the number of fluid level sensors to one, as taught by Adamski et al., while in dependent claim 13 the Examiner takes the position that Wennerberg et al. teaches multiple fluid sensors which of course belies the Examiner's proposed modification to use only one of Wennerberg et al.'s sensors. Similar

remarks apply to dependent claim 15 which specifies that the system for recognition of filling level comprises a number of capacitive filling level sensors.

In addition, in paragraph 29 of the Examiner's Answer, which responds to the separate argument set forth in the Appeal Brief regarding claim 16, the Examiner presents a new argument indicating that Adamski et al. clearly shows that the sensor extends to the base of the washing machine as shown in Figure 1. In viewing Figure 1 of Adamski et al., there is no clear showing that the sensor extends to the base of the washing machine. Thus, Adamski et al. does not teach or suggest that at least one filling level sensor is arranged in the base assembly in such a manner that the rinsing fluid that has flowed from the washing container into the base assembly can be detected.

Finally, in response to Appellants' arguments regarding claim 19, the Examiner presents a new justification for rejection indicating that " … it is well within the skill of one of ordinary skill in the art to have place the probes in the wash container and protected the circuitry from the spray arm since the water being dispensed from the spray arm would cause defects in the circuit." The Examiner's allegations regarding the skill level of one of ordinary skill in the art do not amount to a sufficient substitute for providing a well reasoned motivation for actually making the modification. As set forth in Appellants' Appeal Brief, with a spray device, water would typically hit the sensors which are configured to detect the presence of water at rapid, random intervals such that no sequential operation could be preformed as required in the device of Wennerberg et al.

For the reasons explained in the Appeal Brief and the instant Reply Brief, the Board should reverse the final rejection.

If the Examiner has any questions regarding this Reply Brief, the Examiner is requested to contact the undersigned. If an extension of time for this paper is required, petition for extension is enclosed.

Respectfully submitted,

/James E. Howard/

James E. Howard
Registration No. 39,715
August 24, 2009

BSH Home Appliances Corporation
100 Bosch Blvd.
New Bern, NC 28562
Phone: 252-639-7644
Fax: 714-845-2807
james.howard@bshg.com